

STATE OF MICHIGAN
COURT OF APPEALS

AGNES M. BAWOL,

Plaintiff-Appellant,

v

PAUL G. BAWOL,

Defendant-Appellee.

UNPUBLISHED

September 11, 1998

No. 197937

Oakland Circuit Court

LC No. 93-449680 DO

Before: Holbrook, Jr., P.J., and Gribbs and R.J. Danhof*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment of divorce entered by the trial court pursuant to an arbitration award. We reverse in part, affirm in part and remand.

Plaintiff filed a complaint for divorce in 1993, and the case was submitted to arbitration in January 1994. In July 1994, three creditors, Robert Mabarak, Michael Moore, and Thomas Nowakowski, filed suit against plaintiff and defendant in Wayne County Circuit Court to collect payment on debts owed to them. Prior to the final judgments in the creditors' case, the arbitrator rendered an award, making each party responsible for one-half of the debts owed to the creditors. Plaintiff petitioned the arbitrator to revise the award to reflect the consent judgments in the creditors' suit. In his second arbitration award, the arbitrator denied plaintiff's request, stating in pertinent part, that he was not required to follow the consent judgments because he was applying a fair and equitable standard in the divorce case, which was different than the standard applied in the creditors' case.

Next, plaintiff petitioned the arbitrator to revise his second award to reflect \$6,500 that was taken to pay defendant's attorney from the proceeds of the sale of property awarded solely to plaintiff, and \$2,500 that was taken to pay the arbitrator's fee. The arbitrator issued a third award denying plaintiff's petition. Plaintiff subsequently filed a motion in the trial court to modify or vacate that part of the arbitrator's award that was in conflict with the consent judgments entered between plaintiff, defendant and the three creditors. At the motion hearing, plaintiff also raised the issue of the \$6,500 in attorney's fees. The trial court denied plaintiff's motion.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Under MCR 3.602(J) and (K), a “court’s power to modify, correct, or vacate an arbitration award . . . is very limited. By narrowing the grounds upon which an arbitration decision may be invaded, the court rules preserve the efficiency and reliability of arbitration as an expedited, efficient, and informal means of private dispute resolution.” *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991) (citation omitted).

Plaintiff first argues that the trial court erred in refusing to revise the portion of the mediation award mandating that plaintiff and defendant each pay half of the debt owed to Mabarak, Moore and Nowakowski.¹ We agree. MCR 3.602(J)(1)(c) states that an arbitrator’s award shall be vacated if “the arbitrator exceeded his or her powers.” We believe that in the case at hand the arbitrator exceeded his powers by refusing to adhere to the consent judgments. It is well established in Michigan jurisprudence that “courts are bound by property settlements reached through negotiations and agreement by parties to a divorce action, in the absence of fraud, duress, mutual mistake, or severe stress which prevented a party from understanding in a reasonable manner the nature and effect of the act in which she was engaged.” *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990). Accord *Calo v Calo*, 143 Mich App 749, 753-754; 373 NW2d 207 (1985). Although plaintiff and defendant were both named defendants in the creditor’s lawsuits, their respective responsibilities for those debts were addressed and disposed of in those judgments.

The September 12, 1995 judgment indicates that both plaintiff and defendant accepted they would be liable to Mabarak for \$15,000 and \$3,237.50, respectively. Furthermore, the consent judgment indicates that plaintiff “shall not be liable for any of the debt of” defendant. The September 14, 1995 consent judgment indicates that defendant was liable to Moore for \$9,000, and to Nowakowski for \$42,000. This consent judgment also orders that “the case as to Agnes Bawol regarding all plaintiffs shall be dismissed with prejudice.” Both judgments were signed by plaintiff’s attorney on her behalf, and by defendant himself. There is no evidence in the record of fraud, duress or mutual mistake. There is also no evidence that defendant was under stress so severe at the time of signing the judgment. Furthermore, we note that defendant consented to the division of debt after the arbitrator had issued his first award, in which the monies owed these three creditors was divided equally between he and plaintiff. By ignoring the division of debt expressly agreed to by plaintiff and defendant, the arbitrator acted in contravention of controlling principles of law.

Plaintiff also argues that the arbitrator and trial court should have amended the award to reflect that she receive the entire amount of proceeds from the sale of the Greenfield Road property. Because the arbitrator deducted \$6,500 to pay for defendant’s attorney fees and \$2,500 to pay his fees, plaintiff claims that the award should have been modified pursuant to MCR 3.602(K)(1)(a) and (c), on the basis that: (1) there was an evident miscalculation of figures or an evident mistake in the description of a person, a thing, or property referred to in the award; and (2) the award was imperfect in a matter of form, not affecting the merits of the controversy. We disagree. The arbitrator specifically responded to plaintiff’s assertion that the award should be modified to require defendant to return \$6,500 that was withdrawn from the proceeds of the sale of the Greenfield Road property and half of the \$2,500 taken to pay the arbitrator’s fee. Thus, it cannot be said that there was an evident miscalculation of figures or

an evident mistake in the description of a person, a thing, or property referred to in the award, or, that the award was imperfect in a matter of form, not affecting the merits of the controversy. The arbitrator explicitly intended that plaintiff receive the proceeds from the sale of the property less the amount to pay the attorney and arbitrator fees. Therefore, we find that the trial court properly refused to modify the arbitration award to reflect the withdrawal of the arbitrator and attorney fees.

Reversed in part and affirmed in part. The portion of the judgment of divorce addressing the Mabarak, Moore and Nowakowski debts is hereby vacated. We remand for the modification of the judgment of divorce pursuant to the terms of the September 12 and 14, 1995 consent judgments.

/s/ Donald E. Holbrook, Jr.

/s/ Roman S. Gribbs

/s/ Robert J. Danhof

¹ Although plaintiff does not explicitly state that the arbitrator exceeded his authority by refusing to amend the arbitration award after he learned of the consent judgment, that is the only basis under MCR 3.602 upon which the trial court could have vacated the award. Therefore, we address whether the arbitrator exceeded his authority.